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No. 643

Supreme Court of the United States

OCTOBER TERM, 1939

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR

BENTLEY W. WARREN AND CHARLES W. MULCAHY, AS THE TRUSTEES OF THE PROPERTY OF BOSTON AND PROVIDENCE RAILROAD CORPORATION

v.

HOWARD S. PALMER ET ALS., AS THE TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND OLD COLONY RAILROAD COMPANY

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONERS

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BRIEF FOR THE PETITIONERS

Opinions Below

The opinion and order of the District Court for the District of Connecticut (R. 251-267) are reported in 26 F. Supp.

18. The opinion of the Circuit Court of Appeals (R. 304-315) is reported in 108 F. (2d) 164.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on January 8, 1940 (R. 316-317). The petition for a writ of certiorari was filed on January 13, 1940, and was granted on March 4, 1940. The jurisdiction of this Court rests on § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

The Boston and Providence Railroad Corporation leased its line to the Old Colony Railroad Company, and the Old Colony later leased all of its property to The New York, New Haven and Hartford Railroad Company. The New Haven and the Old Colony are in reorganization before the District Court for the District of Connecticut under § 77 of the Bankruptcy Act, and the trustees of the New Haven have continued the operation of the property of the Boston and Providence.

The question is whether the District Court in Connecticut has jurisdiction of a proceeding to determine the existence and amount of a claim against, and to impose a lien upon the property of, the Boston and Providence, which is itself being reorganized under § 77 of the Bankruptcy Act in the District Court for the District of Massachusetts.

Statutes Involved

The statute involved is § 77 of the Bankruptcy Act, applicable portions of which are set forth in the footnotes at the points where they become relevant, and in the Appendix.

Statement

The Boston and Providence Railroad Corporation is the owner of a line of railroad between Boston, Massachusetts, and Providence, Rhode Island, which was leased to the Old Colony Railroad Company for ninety-nine years from April 1, 1888 (R. 69-90). In 1893 the Old Colony leased its property to The New York, New Haven and Hartford Railroad Company for a term of ninety-nine years, including its leasehold interest in the Boston and Providence (R. 36-44). On October 23, 1935, the New Haven filed a petition for reorganization under § 77 of the Bankruptcy Act in the District Court for the District of Connecticut (R. 6-8), and trustees were appointed on November 8, 1935 (R. 22-24). On June 1, 1936, the trustees gave notice rejecting the lease of the Old Colony to the New Haven (R. 29).

On June 3, 1936, the Old Colony filed a petition for reorganization under § 77 of the Bankruptcy Act as a subsidiary debtor in the District Court for the District of Connecticut (R. 30-44), and on June 18, 1936, despite the obvious diversity of interests, the court appointed the same persons as trustees for the Old Colony as it had appointed for the New Haven (R. 51-59). This order directed the trustees of the New Haven to continue to possess and operate the properties of Old Colony, the operation to be for the account of the Old Colony or the trustees of its property. Thereafter, on May 26, 1937, the Boston and Providence Railroad Corporation filed a petition asking leave to intervene generally in the proceedings for the reorganization of the New Haven and the Old Colony (R. 62-90). On May 27, 1937, the court entered an order permitting the Boston and Providence to intervene "for the purpose of protecting its rights and the rights of its shareholders and of other persons interested in its property and assets" (R. 90-91).

On October 7, 1937, the Bankers Trust Company, as trustee under the first and refunding mortgage of the New

Haven, filed its petition for Order No. 217 to require the trustees of the New Haven to cease to make any cash payments for the account of the Old Colony or its trustees under the lease of the Boston and Providence Railroad Corporation (R. 92-104). Thereafter, on July 19, 1938, the court entered Order No. 217 directing the trustees of the Old Colony to disaffirm and reject the lease of the Boston and Providence, and restraining the trustees of the Old Colony and the New Haven from making any further payments under the lease to the Boston and Providence (R. 208-210). This order provided that "the operation of the property of Boston and Providence for the account of that corporation shall be continued pursuant to subdivision (c)(6) of § 77 of the Bankruptcy Act, and since the Old Colony Railroad Company, as lessee of Boston and Providence, and likewise the Old Colony Trustees, are wholly without any operating organization, the operation of Boston and Providence properties shall be conducted by the New Haven Trustees in behalf of and for the account of the Old Colony estate but without expense to the New Haven estate."

Neither the Old Colony nor the New Haven nor the trustees of either of them at any time elected "no longer to operate the leased line [Boston and Providence]," nor has the Connecticut court ever fixed a period within which the Boston and Providence shall begin the operation of its line, or, upon petition of the Boston and Providence, decreed that it would be impracticable and contrary to the public interest for the Boston and Providence to operate its line, all as provided in § 77(c)(6).

The lease was thereupon rejected by notice dated July 19, 1938 (R. 211). Following the rejection of the lease of the Boston and Providence, the trustees of the New Haven and of the Old Colony filed a petition for Order No. 301, seeking approval of their account showing a deficit in the operation of the Boston and Providence Railroad from June

4, 1936, to December 31, 1937, in the amount of $3,955,298.93, and an order that this sum with interest should "constitute a lien and charge on the earnings and property of Boston and Providence Railroad Corporation in the possession of this Court prior to any mortgage or other lien, charge or claim thereon and prior to any other indebtedness of said Company . . ." (R. 212-220).

On August 4, 1938, a petition was filed by a creditor of the Boston and Providence Railroad Corporation in the District Court for the District of Massachusetts seeking the reorganization of the Boston and Providence under § 77 of the Bankruptcy Act (R. 221-226). This petition was approved on August 5, 1938 (R. 227-228), and the petitioners were appointed trustees of the property of the Boston and Providence, were confirmed by the Interstate Commerce Commission on October 8, 1938, and qualified as such on October 18, 1938.

On October 31, 1938, the Boston and Providence Railroad Corporation filed a statement with the court in Connecticut setting forth the facts of the Massachusetts proceedings and the appointment of trustees for the Boston and Providence, and contending that under § 77 of the Bankruptcy Act the Massachusetts court had "exclusive jurisdiction of the debtor and its property wherever located"—that consequently the District Court in Connecticut had no jurisdiction over the property of the Boston and Providence, or its trustees, and thus was without jurisdiction to enter the requested Order No. 301 (R. 244-246). No appearance was entered on behalf of the trustees of the Boston and Providence.

On January 16, 1939, the court entered its memorandum and order overruling the jurisdictional objections of the Boston and Providence (R. 251-267). On February 14, 1939, the petitioners, as trustees of the property of the Boston and Providence Railroad Corporation, pursuant to author-

ity granted by the District Court for the District of Massachusetts, filed a petition for leave to intervene specially for the limited purpose of joining in and prosecuting an appeal from the order of the court overruling the jurisdictional objections to the petition for Order No. 301, and of defending against the claims contained in that petition (R. 268-269). An order to this effect was entered on the same day (R. 270), and the appeal was also allowed the same day (R. 273).

The Circuit Court of Appeals affirmed this decision holding that the District Court in Connecticut had jurisdiction to entertain the petition for Order No. 301, to adjudicate the claims involved, and to create a lien upon the property of the Boston and Providence. This is the decision which is to be reviewed here.[1]

Specification of Errors to be Urged

The Circuit Court of Appeals erred:

1. In affirming the order of the District Court.

2. In holding that the District Court for the District of Connecticut had jurisdiction to determine the existence and

[1] Following the jurisdictional decision, the District Court proceeded to a hearing on the merits. It determined a deficit in the amount of $3,953,298.93 against the Boston and Providence for the period through December 31, 1937, and declared that the "said amount be and if hereby constitutes a lien, charge or claim on the earnings and property of Boston and Providence Railroad Corporation, prior to any mortgage or other lien, charge or claim thereon and prior to any other indebtedness of said corporation." An appeal from this decision on the merits was heard by the Circuit Court of Appeals below at the same time as the appeal from the jurisdictional decision. The Circuit Court of Appeals reversed the decision on the merits and sent the case back for further proceedings in the District Court (R. 315). The petitioners raise no question in the present proceeding as to the decision of the court below on the merits, except so far as the question of jurisdiction was saved in the appeal upon the merits.

amount of any claim against, and impose a lien upon the property of, Boston and Providence Railroad Corporation or its trustees.

3. In holding that the trustees of the New Haven and of the Old Colony had physical possession of the property of the Boston and Providence Railroad Corporation.

4. In holding that physical possession of the property of the Boston and Providence by the trustees of the New Haven and Old Colony appointed by the Connecticut court gave to that court jurisdiction to determine claims affecting the title to that property.

5. In holding that the lien which the New Haven and Old Colony trustees sought to have imposed upon the property of the Boston and Providence was a sufficient property interest, before its adjudication, to give jurisdiction to the Connecticut court to adjudicate it and impose it upon the Boston and Providence estate.

6. In holding that the "exclusive jurisdiction" over the Boston and Providence "and its property wherever located," given to the Massachusetts court by § 77 of the Bankruptcy Act, would permit the existence of jurisdiction over the Boston and Providence or its property in the Connecticut court.

Summary of Argument

I

The difficulty in this case arises from a confusion of different senses of the word "jurisdiction." There is, *first*, jurisdiction to determine what property within the custody of the court is property of the bankrupt and subject to the administration of the bankruptcy court. And, *second*, there is jurisdiction to conduct the administration of the bankrupt's property. Jurisdiction of the second sort, we contend,

is lacking with respect to the property here involved; for the property of the Boston and Providence was not subject to administration within the Connecticut court's bankruptcy jurisdiction. Even though that court may have had possession of the property, within the proper construction of that term, and even though § 77 still turns upon possession in part, the jurisdiction resulting from possession is not broad enough to sustain the relief sought in this case.

II

A. Property which does not belong to the debtor is not subject to administration in the debtor's bankruptcy. This rule is fully applicable to the lessor's interest in property which was in the possession of the bankrupt under the lease. It is also confirmed by cases involving other situations where property is in the possession of the debtor but not owned by him.

B. This rule is applicable in proceedings under § 77. Under § 77(a) the Connecticut court acquired "exclusive jurisdiction" over its debtors' property; but this did not give it jurisdiction over the Boston and Providence and *its* property. There is nothing in § 77 which extends the jurisdiction of the bankruptcy court to administer property in the possession of the debtor which it did not own. The Boston and Providence could not be reorganized by the Connecticut court.

Section 77 did not impose any duty on the New Haven which would serve as the foundation for implying that the Connecticut court would have a correlative jurisdiction to determine the consequences of the performance of that duty. The duty to operate the railroad existed independently of § 77. That section gave the New Haven a means of escaping the existing burden, but on terms which the New Haven has not seen fit to follow. There is nothing in § 77(c)(6) which suggests that the adjudication of the ac-

count in this case is the exclusive prerogative of the Connecticut court.

C. The jurisdiction of the Connecticut court is not aided by its status as a receivership court. A receivership court does not have jurisdiction over property beyond its territorial limits. The Massachusetts court here is not a mere ancillary court in the New Haven reorganization. It is instead the primary court in the reorganization of the Boston and Providence.

The claim which Petition for Order No. 301 seeks to assert is one which has grown up wholly in equity proceedings. The respondents must take it subject to the territorial limitations on the Connecticut court's jurisdiction to act as an equity receivership court. To say that the lien in question is property within the jurisdiction of the Connecticut court is seemingly to beg the question. It *proves* the preliminary but necessary element of jurisdiction by *assuming* the very point to be proved on the merits.

D. The claim of jurisdiction to determine the priority of the lien is obviously excessive and demonstrates the invalidity of the whole claim of jurisdiction.

III

Exclusive jurisdiction over the Boston and Providence and its property is now vested in the District Court in Massachusetts. This would seem to follow from the plain language of § 77(a) of the Bankruptcy Act which gives the Massachusetts court "exclusive jurisdiction of the debtor and its property wherever located." The sweep of these words is emphasized by their brevity. Congress did not provide for the unified reorganization of railroad *systems*. The only place where the lessor in this case may be reorganized is in the District Court for Massachusetts, and Congress has undertaken to make that reorganization effective by giving the Massachusetts court "exclusive jurisdiction."

Under the decision below, although the Massachusetts court alone has power under the statute to reorganize the Boston and Providence, it is in fact left no real control over that reorganization. If the New Haven claim can properly be liquidated by the Connecticut court, and the rank of the lien fixed by the Connecticut court, then the Massachusetts court has only a perfunctory jurisdiction over "the new allocation of interests in" the Boston and Providence property. It must dispose of all its debtor's property on the say-so of another court.

That the plain words of § 77(a) should be given their plain meaning is shown by other provisions of the statute.

The jurisdiction of the Connecticut court cannot be sustained on the ground that it first took over the *res*. There are many cases in which it has been held that a bankruptcy court supersedes a jurisdiction which has already been obtained by another court. Here the Massachusetts court is exercising bankruptcy jurisdiction so far as the property of the Boston and Providence is concerned. The Massachusetts court is the bankruptcy court and has paramount jurisdiction. Only by recognizing the paramount jurisdiction of the Massachusetts court can the purpose of Congress to achieve a unified disposition of the debtor's estate be obtained.

Argument

I

The Problem of Jurisdiction

The question in this case is whether the District Court for the District of Connecticut has "jurisdiction" in a summary bankruptcy proceeding to determine the existence and amount of a claim against the Boston and Providence and to impose the amount so determined as "a lien and charge on

the earnings and property of the Boston and Providence Railroad Corporation . . . prior to any mortgage or other lien, charge or claim thereon and prior to any other indebtedness of said company . . .". This is the prayer of the petition in this case (R. 216-217). These were the terms of the order which the District Court actually entered in this case and which, on the merits, was reversed by the court below. We contend that the order sought by Petition for Order No. 301 is not one which the District Court has power to enter either in the exercise of its summary bankruptcy jurisdiction or otherwise.

The chief difficulty in this case arises, we believe, from a confusion between different senses of the chameleon word "jurisdiction." There does not seem to be any particular reason to doubt that the Connecticut court had some sort of "jurisdiction" over the physical property owned by the Boston and Providence. Certainly, it had jurisdiction over the leasehold interest of the Old Colony and the New Haven in the Boston and Providence property. Its officers were in fact operating the Boston and Providence property, and the lease was not rejected during the entire period in question. If, however, the lease had terminated during this period, it would not seem that the Boston and Providence could simply have re-entered its property and put out the officers of the Connecticut court. That would not have been orderly procedure. That would apparently have been contempt of the Connecticut court. The proper way to have proceeded would have been by filing a reclamation petition with the Connecticut court. The Connecticut court undoubtedly would have had "jurisdiction" to consider and to grant such a petition in proper circumstances.

That is all that is meant by the cases which hold that a bankruptcy court acquires "jurisdiction" over property in the *possession* of the bankrupt. If the bankrupt is in possession of property in which he has no interest, the true

owner cannot simply seize it. That would lead to obvious conflicts and confusion. He must make orderly application to the bankruptcy court to have his property restored to him; and on such application, if it appears that it is his property, it is the duty of the court to direct that it be turned over to him. Jurisdiction to enter such an order does not mean, however, that the bankruptcy court has "jurisdiction" over the property for all purposes, and particularly it does not mean that the bankruptcy court has "jurisdiction" to administer the property in a summary bankruptcy proceeding.

Two very different sorts of jurisdiction are being talked about. There is, *first*, jurisdiction to determine what property within the custody of the court is property of the bankrupt and subject to the administration of the bankruptcy court, and to conserve such property and the court's jurisdiction over it pending such determination. This is essentially nothing more than an application of the rule that a court has jurisdiction to determine its own jurisdiction. See *Matter of National Labor Relations Board*, 304 U.S. 486, 494 (1938). And, *second*, there is jurisdiction to conduct the administration of the bankrupt's property. Jurisdiction of the first sort may exist in the Connecticut court in this case. Jurisdiction of the second sort, we contend, is lacking with respect to the property here involved; for the property of the Boston and Providence was not the property of the debtors in that court and was not subject to administration within that court's bankruptcy jurisdiction. Process of the district court has never issued to support non-bankruptcy jurisdiction under § 24 of the Judicial Code or otherwise, and indeed no claim of such jurisdiction has been made.

The distinction between the extent of the bankruptcy court's jurisdiction in these two situations cannot be derived with logical certainty from any premises of territoriality or otherwise. It is not the product of syllabus and

syllogism. The word "jurisdiction" in such a case as this is a cloak for allocating the functions of various courts in the orderly administration of bankrupt estates within the scheme established by Congress. *Cf. Palmer* v. *Massachusetts*, 308 U.S. 79, 83 (1939). Its content must be determined on that basis.

When the distinction between the two types of jurisdiction is kept in mind, the inapplicability of most of the cases relied upon by the respondents becomes apparent. Great stress is put on them as establishing that "jurisdiction" follows from possession. This may be true, so far as jurisdiction to entertain a reclamation petition is concerned. It does not follow, we contend, that possession is the touchstone to jurisdiction of the sort which is involved in this case, namely, jurisdiction in the lessee's bankruptcy to administer the lessor's property.

Before proceeding further, it should be pointed out that there is serious question whether the property here involved, namely, the reversionary interest of the Boston and Providence, was in the possession of the Connecticut court. The arguments may be briefly summarized: (1) Upon rejection of the lease, the Old Colony–New Haven trustees continued the operation of the property, but as agents of the Boston and Providence trustees who were then entitled to the property, with the consequence that the property is in law in the possession of the Massachusetts court. (2) While the operation and possession is that of the New Haven trustees under Order No. 217 (R. 208, 210), the claims alleged in petition for Order No. 301 involved in this case are claims of the Old Colony trustees. The facts thus fall squarely within the cases which hold that possession of a bankrupt's property by a third person

is deemed the constructive possession of the bankrupt's trustees and gives the bankruptcy court exclusive jurisdiction to determine all claims relating to the property. See *Taubel-Scott-Kitzmiller Co., Inc.*, v. *F* , 264 U.S. 426, 432 (1924); *Miller* v. *Nugent*, 184 U.S. 1 (1902); *In re Diamond's Estate*, 259 Fed. 70 (C.C.A. 6th, 1919); *Orinoco Iron Co.* v. *Metzel*, 230 Fed. 40 (C.C.A. 6th, 1916). (3) Finally, there is the argument that possession under the lease did not give the Connecticut court possession of the reversionary interest owned by the Boston and Providence. This argument is supported by *Magnolia Petroleum Co.* v. *Thompson*, 106 F. (2d) 217 (C.C.A. 8th, 1939), now pending in this Court after argument. The court held that the conveyances upon which the trustee there relied granted only an easement, and then said (p. 228): ". . . it follows that the possession of the trustee and his grantors under the deed did not extend to the oil and gas underlying the land." See also *In re Manhattan Piggly-Wiggly Corp.*, 296 Fed. 944, 945 (S.D. N.Y. 1923), where the court referred to the separate possession of a leasehold interest, saying: "The possession of the lease, a chattel real, passed to the receiver, like the possession of any other chattel."

It is also far from clear that § 77 proceeds in terms of possession and that decisions under the earlier acts defining jurisdiction in terms of possession are applicable under the new section. Section 77 gives the bankruptcy court "exclusive jurisdiction of the debtor and its property wherever located." It thus deals in terms of title and extends the jurisdiction of the bankruptcy court to property owned by the debtor even though it is not in its possession. It may be contended that § 77 operates as well to restrict jurisdiction so as to exclude property in the possession of the debtor which the debtor does not own. This is the view taken by at least one text writer. See Gilbert's Collier on Bankruptcy (1937) 1467: "Sec. 77 thus shifts from the

former bankruptcy notions of possession to that of title in determining the court's jurisdiction over the debtor's property and its consequential power to control it."

We do not waive these arguments, but they become immaterial if the distinction which we suggest between (1) the merely preliminary jurisdiction arising from possession, and (2) jurisdiction to deal with the property in the administration of the debtor's bankrupt estate, is valid. Under that analysis, even though the Connecticut court had possession, and even though § 77 still turns in part upon possession, the jurisdiction resulting from possession is not broad enough to sustain the relief sought in this case. The argument in support of this position is presented in the following Point.

II

The Connecticut Court Did Not Have Jurisdiction in a Summary Bankruptcy Proceeding Over the Boston and Providence or its Trustees or to Administer its Property

(*A*) *Property which does not belong to the debtor is not subject to administration in the debtor's bankruptcy*

When the bankruptcy court comes to the administration of the debtor's estate, the only property which it has power or "jurisdiction" to administer is the debtor's property. This is a point so obvious that it is difficult to find authority to support it. Indeed, it seems likely that the paucity of cases on the precise subject now before the Court arises from the fact that no one before has ever imagined that the interest of a lessor is subject to the summary ministrations of the lessee's bankruptcy court.

The fact of possession has nothing to do with the court's jurisdiction to administer the property in bankruptcy. This is established by the many cases which have allowed the

owners of property to reclaim their property though it was in the possession of the debtor at the time of bankruptcy.

This obvious and necessary limitation upon the jurisdiction of the bankruptcy court when it comes to the administration of the bankrupt's estate, has been recognized by this Court in a proceeding under § 77. In *Ex parte Baldwin*, 291 U.S. 610, 615 (1934), this Court said with respect to the section now involved: "All property in the possession of a bankrupt *of which he claims the ownership* passes, upon the filing of a petition in bankruptcy, into the custody of the court of bankruptcy." (Italics ours.) The Court thus plainly recognized that property does not become subject to administration under § 77 merely because it was in the possession of the debtor, if the debtor claims no ownership in it.[2] Only by recognizing such a rule "can we avoid anomalous encroachments upon vested rights and interests." *Duparquet Co.* v. *Evans*, 297 U.S. 216, 223 (1936).

This rule is fully applicable to the lessor's interest in property which was in the possession of the bankrupt under the lease. Thus, in *General Motors Acceptance Corp.* v. *Horton*, 85 F. (2d) 452, 453 (C.C.A. 3d, 1936), the court said:

> If the transaction was a conditional sale, title to the automobile was in the lessee and passed to its trustee in bankruptcy as of the date of the filing of the petition; but if the contract was a lease, *title did not pass and the property belongs to the appellant.* (Italics ours.)

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[2] The statement in *Ex parte Baldwin* (p. 617) with respect to "the right of trustees or receivers to protect their possession or title through proceedings in the bankruptcy court" must be read in the light of the earlier reference in the opinion (p. 616) to "exclusive jurisdiction acquired by the bankruptcy court through taking possession of the interurban railway *under claim of title.*" (Italics ours.) In the present case, there is no possible basis for any "claim of title" to the property of the Boston and Providence at the time of the New Haven bankruptcy; and no such claim has been asserted.

A similar question was involved in *In re Wil-Low Cafeterias, Inc.*, 95 F. (2d) 306 (C.C.A. 2d, 1938), certiorari denied, 304 U.S. 567 (1938). This was an application by the lessor for an order directing the debtor to vacate the leased property. The court, construing the provisions of the lease, found that it had terminated, and said: "The appellant is entitled to an order for the surrender and possession of the premises." See also *In re Chase Commissary Corp.*, 11 F. Supp. 288, 13 F. Supp. 83 (S.D. N.Y. 1935). In the first of these opinions the court directed that the lessee make payment for the use of the property or "vacate the premises withouf further order of the court."

The correctness of this conclusion with respect to leased property is recognized by text writers in this field. Thus, Finletter, Law of Bankruptcy Reorganization (1939) 139, says:

> It is important however to note that in the case of intangible rights which represent less than the complete ownership of the res, the "property" which is subject to the jurisdiction of the court is only the interest of the debtor in the asset.

The distinction between the jurisdiction over the lessor's interest acquired by possession of the premises, and jurisdiction to deal with the property in the bankruptcy proceedings, is clearly stated in *Green* v. *Finnegan Realty Co.*, 70 F. (2d) 465, 466 (C.C.A. 5th, 1934), where the court said:

> The court through its officer having chosen to reject the lease, had neither rights nor obligations under it. In strict law it had no better right to occupy the premises against a lawful demand of the person entitled to possession than a private person would have. It is true that the owner's remedy is different. He could not without coming into contempt of court eject

> the court's officer by force, nor proceed against him for a forcible detainer, nor throw the property in the custody of the court out of doors; but he could at once petition the court for possession and the court would be bound to do justice according to the circumstances.

Thus, the court has jurisdiction to determine whether the property is the property of the debtor. Once it appears that the property is not the property of the debtor, there is no further jurisdiction to deal with the property in the bankruptcy proceedings.

The correctness of this view is also established by cases involving other situations where property is in the possession of the debtor, but not owned by him. This was essentially the question in *Magnolia Petroleum Co.* v. *Thompson*, 106 F. (2d) 217 (C.C.A. 8th, 1939), now pending before this Court after argument. The Circuit Court of Appeals there held that the bankrupt owned only a right of way over the premises in question. Having made this determination, it held that the District Court "was without jurisdiction to make the order appealed from; and that the order was wholly void." 106 F. (2d) at 228. Perhaps it should have been held in that case that the District Court had jurisdiction to determine the disputed question of title to the property and to enter such orders as were necessary for the preservation of the property pending the settlement of that dispute. But once the question of ownership was settled adversely to the bankrupt, then it is submitted that the Circuit Court of Appeals in that case was correct in holding that the property was not subject to the further order of the bankruptcy court. A similar problem was involved in *In re Lake's Laundry, Inc.*, 79 F. (2d) 326 (C.C.A. 2d, 1935), certiorari denied, 296 U.S. 622 (1935). The property there was in the *possession* of the bankrupt under a conditional sale. The court held, however, that the prop-

erty was not subject to administration in a proceeding under § 77B, and ordered that it be returned to the vendor.

The opinion in *In re Commonwealth Bond Corp.*, 77 F. (2d) 308 (C.C.A. 2d, 1935), presents a discussion which is very closely analogous to the question here. In that case the petitioner sought permission to bring a suit in a state court with respect to property held by the debtor as trustee. The court allowed this, saying (p. 309):

> In this he was clearly within his rights; the trust property is not the debtor's property, the "certificate holders" are not its creditors; no reorganization can include either. It is in no sense ancillary to the purposes of bankruptcy that the property of others should be administered along with the bankrupt's; . . . Gamble v. Daniel, 39 F. (2d) 447 (C.C.A. 8), may appear contradictory, and perhaps it is; but we are disposed to think otherwise. It is true that the district court was affirmed in taking out of the very maw of a state court the property of an insolvent company subject to the Bankruptcy Act. Further, the court refused to limit its order to that part of the mingled assets which belonged to the bankrupt; it took the whole mass, that which it held personally along with that of which it was trustee. Yet that was not to assert a power to administer the fiduciary assets; it is an entirely rational distinction to insist that though the District Court may seize all the property and must do the separating itself, after separation it must remit the trust properties to the state court for administration. Right or wrong, Gamble v. Daniel went no further than the first step, which need not concern us here. . . . It is quite true that we have recently several times decided that under this section the district court may in some circumstances control lienors who hold property of

> the debtor in their possession. . . . But the power so exercised was necessarily founded upon the possibility of bringing the security, suits against which were enjoined, within a plan of reorganization. Stays must be ancillary to the main purpose of the proceeding and are not lawful when they cannot contribute to execution of the plan. Since property held by the debtor as fiduciary cannot be included, suits confined to its administration may not be stayed.

The discussion of the case of *Gamble* v. *Daniel* in this quotation seems very close to the question involved here. The jurisdiction of the District Court there, which "went no further than the first step," is similar to the jurisdiction of the Connecticut court here. But the presence of that jurisdiction does not mean that the property is subject to administration in the bankruptcy suit. Thus, in *In re Prudence Bonds Corp.*, 79 F. (2d) 212, 215 (C.C.A. 2d, 1935), the court said: "It is property of the debtor which the court administers in reorganization proceedings." Similarly, in *In re Prudence Co., Inc.*, 82 F. (2d) 755, 757 (C.C.A. 2d, 1936), certiorari denied, 298 U.S. 685 (1936), the court said: "As in each instance the trust res is not the property of this debtor, it is no part of the property *within the jurisdiction of the court in these proceedings and so subject to its orders.*" (Italics ours.) And in *Thomas* v. *Woods*, 173 Fed. 585, 592 (C.C.A. 8th, 1909), the court said: "Bankruptcy can only deal with what in law belongs to the bankrupt."

The principle involved becomes clear when the question of jurisdiction is examined from another point of view. If we assume that the Boston and Providence properties had been subject to a mortgage, and that foreclosure proceedings had been started in another federal or state court during

the pendency of the Old Colony reorganization proceedings, or if a creditor of the Boston and Providence had attached its property, it could not seriously be contended that the Connecticut court would have had the power to enjoin the prosecution of such proceedings.[3] The lack of jurisdiction in such a case would seem to show that the property of the Boston and Providence is likewise not subject to the jurisdiction of the Connecticut court in the present proceeding.

What we have here is simply a claim by the Old Colony trustees against the Boston and Providence. The situation is parallel to that involved under § 77B in *United States* v. *Tacoma Oriental S.S. Co.*, 86 F. (2d) 363, 368 (C.C.A. 9th, 1936). The court there quoted with approval the statement made in *In re Prudence Bonds Corp.*, 75 F. (2d) 262, 263 (C.C.A. 2d, 1935), that "Congress did not intend the bankruptcy court in proceedings under section 77B to take over all litigation between the debtor and third persons," and said:

> *Unless the debtor's property is involved* no jurisdiction extends beyond the District Court's boundaries. (Italics ours.)

There are a few bankruptcy cases involving leased property which may be relied upon by the Old Colony–New Haven trustees. They do not support the contention made in the court below that when a bankruptcy court has taken custody of leased premises "its jurisdiction over the prop-

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[3] In *Ex parte Baldwin*, 291 U.S. 610 (1934), where this Court held that the bankruptcy court had power to enjoin a proceeding against property owned by the lessor, the lessor was itself in bankruptcy as a subsidiary of the lessee in the lessee's proceeding under § 77. See Petition for a Writ of Mandamus, No. 19, Original, October Term, 1933, p. 4.

erty is exclusive," with the inference that the bankruptcy court may deal with the lessor's interest in the bankruptcy proceedings. Not all of these cases gave adequate consideration to the nature of the interests involved. In all of them, however, the action of the court was temporary, and directed towards the preservation of the lessor's interest which was before the court. Thus, in *In re Chambers, Calder & Co.*, 98 Fed. 865 (D. R.I. 1900), the decision involved the right of a landlord to maintain a proceeding in the state court for the recovery of property leased by the bankrupt. The point decided, therefore, amounts to no more than that the proper way to proceed is through a reclamation petition in the bankruptcy court. Moreover, it appeared that the bankrupt had a large quantity of goods within the leased premises which could not be safely packed and removed within less than four weeks. The court, while recognizing the right of the landlord, relied upon its incidental equity power (p. 866) "to meet a situation in which the strict and immediate enforcement of a legal right would lead to unnecessary and disproportionate loss to others, or would result collaterally in conferring an inequitable advantage. A court of equity, *while giving the fullest recognition to a legal right*, may so regulate the time and manner of its enforcement as not to cause unnecessary loss to others." (Italics ours.)

Similarly, the case of *In re Kleinhans*, 113 Fed. 107 (W.D. N.Y. 1902), concerned the question of a reasonable time within which a landlord might repossess his property then in the hands of the bankruptcy court, and the power of that court to enjoin summary proceedings in another court, the prosecution of which would be detrimental to the estate. In these cases the court's power was derived from its bankruptcy jurisdiction over the lessee's interest and its jurisdiction to take action to prevent unnecessary injury to the debtor's estate, and not from any jurisdiction to deal di-

rectly with the lessor's interest in the leased property.[4] The legal rights of the landlords in each of these cases were recognized and compensation was reserved to them for the delay resulting from the bankruptcy court's action. To the same effect is *In re Schwartzman*, 167 Fed. 399 (D. S.C. 1909).

In the case of *In re Adams*, 134 Fed. 142 (D. Conn. 1905), the leasehold interest of the bankrupt and the right to possession under the lease were the interests which were held to be subject to the judgment of the trustee in bankruptcy under the guidance of the referee. The court was dealing only with the property of the debtor which was before it.

These cases are simply illustrations of the rule applied by this Court in *Continental Bank* v. *Rock Island Ry.*, 294 U.S. 648, 681 (1935), where it said: "The injunction here goes no further than to delay the enforcement of the contract. It affects only the remedy." The power of the bankruptcy court to regulate the exercise of a landlord's rights so as to prevent unnecessary injury to the bankrupt estate falls far short of the power claimed by the Old Colony–New Haven trustees to be vested in the Connecticut court to adjudicate claims against the lessor, and to impose liens upon the landlord's estate.

(B) This rule is applicable in proceedings under Section 77

When the New Haven reorganization petition was approved, the Connecticut court acquired "exclusive jurisdiction of the debtor and its property wherever located."

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[4] "This interference with the rights of the other party is in no sense an exercise of jurisdiction over the subject matter of the contract or over the property covered by the lease: it follows from the control of the court over the debtor's contract right or leasehold interest." Finletter, Law of Bankruptcy Reorganization (1939) 141.

Section 77(a); *infra*, p. 48. This provision gives the bankruptcy court comprehensive jurisdiction over the debtor's property; it is plainly not broad enough to give the Connecticut court jurisdiction over the Boston and Providence and *its* property. The only property over which the Connecticut court acquired jurisdiction for the purposes of bankruptcy administration was the property of the New Haven (and later of the Old Colony), and so far as the Boston and Providence is concerned, that consisted solely of a lessee's interest in the Boston and Providence line. This was subject to adoption or rejection as the Old Colony trustees might elect. In either event, the leasehold was the only interest in the Boston and Providence properties which the Connecticut court could administer for the benefit of Old Colony and New Haven creditors. Whatever right to possession and use of the Boston and Providence properties the Connecticut court had was derived solely from the lease.

Section 77 extends the jurisdiction of the bankruptcy court to property owned by the debtor, even though it was not in its possession. But there is nothing in § 77 which extends the jurisdiction of the bankruptcy court to administer property in the possession of the debtor which it did not own. The legislative history makes it clear that the lessor and its property cannot be brought into the bankruptcy proceeding of the lessee. When § 77 was first enacted in 1933, it contained express provision allowing (1) any subsidiary of a principal debtor, or (2) any company "substantially all of whose properties are operated by such a debtor under lease or operating agreement" to file a petition in the same proceeding. Act of March 3, 1933, c. 204, § 77(a), 47 Stat. 1467, 1474. When such a petition was filed by a subsidiary or a lessor, the statute expressly gave the court the same jurisdiction over the petitioner and its property as it had with respect to the principal debtor. If this statutory provision had remained in force, the Boston and Providence

could have filed a petition in the New Haven and Old Colony proceedings in Connecticut, and the Connecticut court would thereupon have acquired exclusive jurisdiction over the Boston and Providence and its property, and the property of the Boston and Providence would have been subject to administration in the bankruptcy proceeding in Connecticut.

But this statute did not remain unchanged. By the Act of August 27, 1935, c. 774, 49 Stat. 911, § 77(a) was amended so as to eliminate entirely all reference to jurisdiction over lessor companies, while retaining the provision for jurisdiction over subsidiaries. We have, thus, the argument of *expressio unius est exclusio alterius*. Congress by specifically including a provision as to subsidiary companies has indicated its intention that the property of subsidiaries but not of lessors may be brought within the administration of the principal reorganization court. And this is made explicit, and not a mere matter of inference, by the elimination from the statute of the specific reference to lessor companies which had previously been included there.[5] The statute thus makes it clear that the Boston and Providence could not be reorganized in the Connecticut court. The

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[5] The provision for a petition by lessor companies was cut out of the act in the bill reported by the House Judiciary Committee on June 21, 1935. See House Report No. 1283, 74th Congress, 1st Session, p. 10.

This change takes on a particular significance in the light of the corresponding provision as to non-railroad corporations in § 77B and chapter X. Section 77B(a) contained a sentence similar to that in the original § 77(a) under which a subsidiary or a corporation "substantially all of whose properties are operated by such debtor under lease or operating agreement" might file a petition in the original proceeding. No change was made in this until the enactment of the Chandler Act in 1938. The latter act introduced a change of form but made no alteration of substance. In § 106(13) of chapter X a new definition of "subsidiary" is introduced, including "a corporation substantially all of whose properties are operated under lease or operating agreement." Then in § 129 it

general rule that property of a lessor cannot be dealt with in the administration of the lessee's bankrupt estate is thus strongly re-enforced under § 77.

There is no other provision of § 77 which points to a different conclusion. Section 77(c)(6)[6] was advanced by the District Court as implying the duty of the New Haven trustees to operate the Boston and Providence, and from this implication it was inferred or assumed that the Connecticut court was the proper tribunal to determine the accounts of such operation and to impose a lien for a deficit. Neither the implication nor the inference seems warranted. In the first place, § 77(c)(6) has not come into operation in this case. By its terms, it applies only "if the lessee . . . shall elect no longer to operate the leased line." In such a case, the judge is to fix a period at the end of which the lessor shall "begin the operation of such line," unless the lessor in turn files a petition and the judge finds that "it would be impracticable and contrary to the public interest for the lessor to operate the said line." Only then does the

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is provided that a petition may be filed by or against a "subsidiary" either at the place of the subsidiary's principal place of business or in the court in which the parent's proceeding is pending. Act of June 22, 1938, c. 575, 52 Stat. 840, 884, 886.

There is thus a plain difference between the provisions as to railroad lessors in § 77 and non-railroad lessors in § 77B and chapter X.

[6] Section 77(c)(6) reads as follows:

"If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of the Interstate Commerce Act as amended."

statute provide that the lessee shall "continue operation on or for the account of the lessor." None of these events has happened in this case. Until the time fixed as specified in the statute has arrived, the duty of operation is cast, by the plain words of the Act, upon the lessee. Until that time, the statute gives no basis for the conclusion that the lessee is to operate "on or for the account of the lessor."

The duty of the New Haven to operate the Boston and Providence properties needs no implication. It does not arise out of § 77. It was, and for many years has been, an express duty imposed both by the law of Massachusetts and of the United States. Mass. Gen. Laws (Ter. Ed.) c. 159, § 16, and § 16A, added by Mass. Laws 1938, c. 243; Mass. Gen. Laws (Ter. Ed.) c. 160, §§ 128, 129; Interstate Commerce Act, § 1 (18), as amended by the Transportation Act, 1920, c. 91, 41 Stat. 456, 477.[7] See *Palmer* v. *Massachusetts*, 308 U.S. 79, 82 (1939). The lease to the Old Colony transferred to it, and through it to the New Haven, not only the physical property of the Boston and Providence, but also its franchise (R. 73). And the franchise carried with it not only the privilege to operate, but also the public duty to operate. The only effect that § 77 of the Bankruptcy Act had on the obligations existing under the lease was: (1) to afford relief to the debtor from payments of rent and other obligations to the lessor under the lease, by allowing the lessee debtor to disaffirm and reject the lease; and (2), under subsection (c)(6), to afford relief to the debtor lessee from its obligation to operate the leased road, if a certain pro-

[7] This latter provision reads as follows:

"Section 1(18). Extension or abandonment of lines; certificate required.— . . . and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, *or the operation thereof*, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment." (Italics ours.)

cedure is followed, under certain conditions which have not been met in this case, and subject ultimately to the approval of the Interstate Commerce Commission.

Section 77 imposed no new duties or burdens on the New Haven. Rather, it gave it a means to escape an existing burden on terms which the New Haven has not seen fit to follow. There is thus no basis for arguing that it must have granted compensatory rights and remedies, since it imposed no burden.

Section 77(c)(6) makes no provision for the fixing of deficits or the determination of liens. Even if its terms had been complied with, so that the provision for operation "on or for the account of the lessor" had come into force, there is nothing in the statute which is even the basis for an inference as to the court which shall have jurisdiction to determine the account and adjudge its consequences. The trustees of the New Haven may present their account to the Massachusetts court, and if it appears that their claim is well founded, they will be entitled to all relief which shall be proper. There is nothing whatever in § 77(c)(6) which suggests that this adjudication is the exclusive prerogative of the Connecticut court.

Another provision upon which reliance has been placed is § 77(c)(10).[8] This paragraph provides for segregation

[8] Section 77(c)(10) reads as follows:

"The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate."

and allocation of earnings and expenses between various parts of a railroad, including those which are separately subject to lease. But this affords no basis for inferring that the lessor's interest in the leased property is subject to the bankruptcy court's administration. A segregation that did not deal with the entire system revenues and expenses, including those pertaining to the leased lines, would be useless for purposes of reorganization, and probably impossible to prepare. Moreover, there are many situations in which segregation and allocation may be directly applied by the court in the original proceedings. This is true, for instance, as between the New Haven and the Old Colony. The Old Colony, being a subsidiary of the New Haven, is properly before the Connecticut court under the provisions of § 77(a).[9] Section 77(c)(10) has obvious application with respect to a leased line where the lease is still in effect. In such a case, the segregation formula is necessary to aid the court to determine the value of the lease to the debtor. But this does not mean that the lessor's interest is subject to the administration of the court.

That § 77(a) was not intended to give the bankruptcy court jurisdiction in the administration of the property of a lessor of the debtor seems to be clearly indicated by an amendment which was made to § 77(j) in the 1935 revision of the statute. Congress at that time added a specific provision that "the title of any owner" to leased equipment "shall not be affected by the provisions of this section" (see p. 51, *infra*). It was thus made plain that the rights of lessors of equipment would not be disturbed by the act, specifically, that the lessor's interests would not be subject to administration by the lessee's bankruptcy court. This singling out of equipment lessees without any reference to leases,

[9] The application of segregation formulae under § 77(c)(10) in this situation was passed upon in *Palmer* v. *Palmer*, 104 F. (2d) 161 (C.C.A. 2d, 1939), certiorari denied, October 16, 1939.

of land might at first seem to lead to an inference against our position; but the contrary is plainly established by the legislative history of the amendment. At the Hearings before the House Judiciary Committee, Mr. Leslie Craven, who was counsel for the Federal Coordinator of Transportation and the draftsman of the bill, stated that this amendment to § 77(j) did not "change the right of the owner of that equipment. We simply negative any possibility that this act will be so interpreted as to change that right. . . . We have not tried to [alter those rights]. We simply recognize them as they are; that is the clear import of that language." Hearings before the House Committee on the Judiciary on H.R. 6249; 74th Congress, 1st Session, April 16, 1935, p. 61. The fact that this new provision as to equipment was merely declaratory of existing law, shows that the title of lessors of real property should likewise "not be affected by the provisions of this section." Certainly the statute gives no basis for the conclusion that when the court acquired jurisdiction over "the debtor and its property" it acquired and retained jurisdiction over property which the debtor never owned and has now rejected. Indeed, the New Haven, which is the real claimant here, rejected its lease on June 1, 1936 (R. 29), and thus lost all interest in the property before the date of the first charge in Petition for Order No. 301, which is June 4, 1936 (R. 219).

Section 23 of the Bankruptcy Act is another provision which confirms our construction of § 77.[10] Section 23 is applicable to proceedings under § 77. See § 77(l); *infra*, p. 51. The exact scope and effect of § 23 are far from clear.

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[10] Section 23 as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840, 854, reads as follows:

"Sec. 23. *Jurisdiction of United States and State Courts.*—a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by

It would seem at least by analogy to show that Congress did not contemplate that the Connecticut court would have jurisdiction to entertain such a proceeding as that involved here. In *Thompson* v. *Terminal Shares, Inc.*, 104 F. (2d) 1, 9 (C.C.A. 8th, 1939), certiorari denied, October 9, 1939, the court made specific reference to § 23 in denying jurisdiction. It said:

> To sustain the lower court's jurisdiction of this suit would do violence to the general policy of Congress that persons shall not be subjected to civil suits except in the districts of which they are inhabitants . . . The language used by Congress in Section 77, in conferring jurisdiction upon the courts of bankruptcy, does not, in our opinion, indicate any intention to abandon that policy with respect to such suits as this.

The applicability of § 23 to proceedings under § 77 is emphasized by the specific provision in the new chapter X of the Bankruptcy Act, which makes § 23 inapplicable to ordinary corporate reorganization proceedings.[11] This

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the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

"b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act."

[11] Section 102 of the Bankruptcy Act as enacted by the Act of June 22, 1938, c. 575, 52 Stat. 840, 883, reads in part as follows:

"The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however*, That section 23 . . . shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive. . . ."

makes it plain that § 23 remains a relevant factor in the proper construction of § 77. *Cf.* Finletter, Law of Bankruptcy Reorganization (1939) 184.

(C) The jurisdiction of the Connecticut court is not aided by its status as a receivership court

Under § 77(a) the reorganization court is also granted "all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose." This provision does not confer upon the Connecticut court jurisdiction to impose a lien upon the property of the Boston and Providence. Few things are more clearly established than the rule that a receivership court does not have jurisdiction over property beyond its territorial limits. This point was conceded by the respondents in the court below.[12] There seems no reason for discussing it further here.

The position of the court below as a receivership court is not aided by cases which deal with the "rule of practice" under which an ancillary court in receivership proceedings paid deference to the decrees of the principal receivership court. *Ames* v. *Union Pacific Ry. Co.*, 60 Fed. 966 (C.C. E.D. Neb. 1894); *Ames* v. *Union Pacific Ry. Co.*, 74 Fed. 335 (C.C. D. Neb. 1896); *Farmers Loan and Trust Co.* v. *Northern Pacific R. Co.*, 72 Fed. 26 (C.C. 1896). Such cases necessarily recognize that the actual jurisdiction over the property is in the ancillary court. But the real answer is the fact that there is no question here of primary and

[12] In their brief in the court below, the respondents said (p. 38): "It is true these orders could have no *in rem* effect on extraterritorial property." And (p. 39): "It is probably true that these orders could not of their own force alone, have established a lien on property outside the territorial jurisdiction of the courts which made them."

ancillary receivership. The District Court in Massachusetts is not in the position of an ancillary court in the New Haven reorganization; it is not merely another court which happens to have more direct and immediate authority over certain property of the New Haven than does the court of primary reorganization. The Massachusetts court is itself the primary court in the reorganization of the Boston and Providence. Imposition of the lien on the Boston and Providence property will not involve merely an ancillary enforcement of an order of a court of primary jurisdiction. The court in Massachusetts is directing an independent and competing reorganization, indeed, as to Boston and Providence property, a superior and "exclusive" reorganization. The Connecticut court's equity receivership powers do not give it jurisdiction to make orders which will bind the Massachusetts court.

Indeed, the territorial limitations upon the Connecticut court's position as a receivership court seem to be the clue to the whole case. The claim which Petition for Order No. 301 seeks to assert is one which has grown up wholly in equity receivership proceedings. It is not necessary to discuss the merits of that claim here. So far as the right to recover from the lessor or to place a lien upon its property has any validity, it is the creature of equity developed in equity receivership proceedings. See *Mercantile Trust Co.* v. *Farmers Loan and Trust Co.*, 81 Fed. 254 (C.C.A. 8th, 1897); *Pennsylvania Steel Co.* v. *New York City Ry.*, 198 Fed. 721, 730-734 (C.C.A. 2d, 1912). But these cases involve no question of jurisdiction. In them, the lessor's and the lessee's estates were both in receivership in the same proceeding with the same receivers administering both estates. The question is treated as one arising out of the administration of the property, and it is on the ground that it is an "administration expense" that it is held to be entitled to priority. But the Connecticut court has no power

to administer the property of the Boston and Providence. The equity receivership cases, on which the present claim is founded, obviously furnish no foundation for the effort of the Connecticut court here to impose a lien on property beyond its jurisdiction.

The respondents are asserting what is fundamentally an equity receivership right against property which is not property of their debtors; they must take it subject to the territorial limitations on the Connecticut court's jurisdiction to act as an equity receivership court. If the respondents in this case have a claim arising out of the operation of the Boston and Providence Railroad, it is a claim which must be asserted in a plenary proceeding; and so far as they contend that their claim constitutes a lien on certain property, they must make their claim before a court having power to administer that property. Such a proceeding can only be brought in Massachusetts. The Massachusetts court will have jurisdiction over the property in question, and if the facts are such as to warrant the imposition of a lien, that court will have power to impose the lien and enforce it as well.

It should not be overlooked that the claim in this case is one which has arisen in its entirety after the bankruptcy of the Old Colony. The claim did not exist at the time of the bankruptcy of the New Haven or when the Old Colony joined in those proceedings. It arose out of the operation of the Boston and Providence by the New Haven trustees *after* the bankruptcy of the Old Colony. As such, it is not and cannot be "property of the debtor" within § 77(a). It is a claim of the trustees in their administration of the estate and not an asset of the estate for distribution to creditors.

The court below, in referring to the lien, said that the Connecticut court had " 'exclusive jurisdiction' over the 'property wherever located' of the New Haven and of the

Old Colony. The lien is as much their 'property' as the encumbered fee is the Boston and Providence's." (R. 309.) This seems to be a clear case of judicial boot-strap lifting. *First*, it overlooks the fact that the claim in question is not property of the New Haven or of the Old Colony, but is a claim arising in favor of the trustees and thus not within the jurisdictional provisions of § 77. *Second*, any lien that may be imposed in this case will be imposed as a matter of remedy. It can only be imposed after the existence of a deficit has been established and by a court which has jurisdiction to impose it. To assert that a lien is property within the jurisdiction of the court when no lien can be created unless the court has jurisdiction is seemingly to engage in a question-begging circle. It *proves* the preliminary but necessary element of jurisdiction by *assuming* the very point to be proved on the merits. The obvious answer would seem to be that the only court which can impose a lien on property is the court which has jurisdiction over the property; and that court in this case is the Massachusetts court. This is essentially what was decided in *Thompson* v. *Terminal Shares, Inc.*, 104 F. (2d) 1 (C.C.A. 8th, 1939), certiorari denied, October 9, 1939, where the debtor likewise was claiming a lien.

The court below seems to recognize the weakness of its own decision when it says (R. 308): "It may possibly be true that the Connecticut Court will have to resort through its trustees to the Massachusetts Court to realize upon the lien." It is a strange kind of "jurisdiction" which enables a court to create a lien but not to enforce it. Since the lien in this case is purely remedial, it would seem that power to enforce it was of the essence, and that a concession that the Connecticut court does not have jurisdiction to enforce the lien should have led to the conclusion that it has no jurisdiction to establish it. Why should the Connecticut court from the standpoint of practical bankruptcy administration

have jurisdiction to impose a lien which it cannot enforce? "The foundation of jurisdiction is physical power." *Ex parte Indiana Transportation Co.*, 244 U.S. 456, 457 (1917). If the Connecticut court cannot enforce the lien, it would seem to follow that it should not have jurisdiction to create it.

(D) The claim of jurisdiction to determine the priority of the lien is obviously excessive and demonstrates the invalidity of the whole claim of jurisdiction

The petition with which this proceeding was begun prays for the imposition of a lien on the property of the Boston and Providence, which shall be "prior to any mortgage or other lien, charge or claim thereon and prior to any other indebtedness of said company . . ." (R. 216-217.) These were the terms of the order which the District Court actually entered in this case. It seems obvious that the effort to determine the priority of the lien was wholly beyond the jurisdiction of the Connecticut court. The Connecticut court did not have before it the other persons who might have claims against the Boston and Providence and liens upon its property. It has no power to bring such claimants before it, for it is not administering the property of the Boston and Providence in bankruptcy. The Connecticut court cannot have jurisdiction to determine the priority of the liens as against claimants who are not and cannot be before it.

Once it is granted that the Connecticut court cannot determine the priority of the lien in question, it would seem to follow, and especially as a matter of practical bankruptcy administration, that the Connecticut court should not have jurisdiction to determine the existence of the lien either. A jurisdiction *in rem* which is sufficient to allow the determination of a lien but not sufficient to establish its

priority, or to enforce it, is rather hard to picture. It is certainly not consistent with the practical and efficient working of bankruptcy administration, which should be the key to jurisdiction in such a case as this. The whole matter would seem to lie within the jurisdiction of the Massachusetts court, which alone can bring all parties interested in the Boston and Providence estate before it, and determine all questions in the matter, including priorities, and which alone can effectively administer the property of the Boston and Providence. This aspect of the matter is discussed further at pp. 40-42, below.

III

Exclusive Jurisdiction over the Boston and Providence and its Property is Now Vested in the District Court in Massachusetts

The preceding part of this argument has for the most part been directed towards the question of the jurisdiction of the Connecticut court, apart from the fact that the Boston and Providence is now itself in reorganization under § 77 in the District Court of Massachusetts. Even if the Connecticut court would have had jurisdiction over the claim and lien in question as long as the Boston and Providence remained out of bankruptcy, we submit that that jurisdiction has now ceased, and that the District Court in Massachusetts alone has jurisdiction.

This would seem to follow from the plain language of § 77(a) of the Bankruptcy Act. By the express terms of that statute, the District Court for the District of Massachusetts, upon the approval of the petition for the reorganization of the Boston and Providence, acquired "exclusive jurisdiction of the debtor and its property wherever located." When the Massachusetts court acquired "exclusive jurisdiction" of the Boston and Providence and its

property, whatever jurisdiction the Connecticut court may have had necessarily ceased.[18] The Connecticut court never had any jurisdiction over the trustees of the Boston and Providence. We have contended above that it did not have jurisdiction over the property of the Boston and Providence. But even if that contention should fail, § 77(a) seems to require the conclusion that after the approval of the petition by the Massachusetts court, the Connecticut court ceased utterly to have any jurisdiction over the Boston and Providence or its property.

The sweep of the words of the statute is emphasized by their brevity. The grant to the Massachusetts court is of "exclusive jurisdiction of the debtor and its property wherever located." It is hard to see how these words can fairly be limited in their operation, particularly when their setting is considered.

The purpose of § 77 was to provide a single court for the reorganization of railroad corporations and thus to do away with the system of ancillary receiverships and the delays and conflicts to which they gave rise. When § 77 came into the statute, the Committee Report of the House Committee on the Judiciary referred to the "protracted period" of administration in equity receiverships, and the "duplication of expense incident to ancillary receiverships." The remedy offered was the present § 77, which sought to eliminate all this by giving the judge "jurisdiction of the debtor's property wherever located." House Report No. 1897. 72d Congress, 2d Session, p. 5. The elimination of

[18] For this reason, the fact that the Boston and Providence had filed a petition to intervene in the New Haven proceedings (R. 62-91) is immaterial. This did not give the Connecticut court jurisdiction over the property of the Boston and Providence in any event. Moreover, the order entered by the court specified that the intervention was only "for the purpose of protecting its rights and the rights of its shareholders and of other persons interested in its property and assets." (R. 91.)

ancillary receiverships through the centralization of jurisdiction in one court was referred to by Senator Hastings, in charge of the Bill, on the floor of the Senate. See 76 Congressional Record, Part 5, pp. 5104-5107, February 27, 1933.

In view of the clear language used by Congress and in view of the circumstances which gave rise to the legislation, there seems to be every reason to believe that when Congress said that the Massachusetts court should have exclusive jurisdiction in this case, it meant that its jurisdiction should be exclusive. In *Continental Bank* v. *Rock Island Ry.*, 294 U.S. 648, 683 (1935), the Court said, in respect of § 77: "Jurisdiction over reorganization proceedings, however extensive the railway lines may be, is conferred upon a *single district court.*" (Italics ours.) The only way that jurisdiction can be effectively conferred upon a single district court is by making effective that court's grant of exclusive jurisdiction.

It should be noted that Congress did not provide for the unified reorganization of railroad *systems*. It might have made such a provision, and there may be reason to suppose that it would be desirable or convenient to have one court charged with the responsibility for reorganizing all the elements of an entire system. That is essentially what the Connecticut court is seeking to do in this case. But Congress has made no such provision in the statute. On the contrary, it has provided for the separate reorganization of railroad *corporations*. In the case of subsidiaries, they may be reorganized in the same proceeding with the principal debtor. But, as we have already seen (*supra*, pp. 24-26), the provision which once allowed a lessor to be brought into the lessee's proceeding has been eliminated from the statute. The only place where the lessor in this case may be reorganized is in the District Court for Massachusetts, and Congress has undertaken to make that reorganization effective by endowing the Massachusetts court with "exclusive juris-

diction of the debtor and its property wherever located."

Under the decision below, although the Massachusetts court alone has power under the statute to reorganize the Boston and Providence, it is in fact left no real control over that reorganization. That decision nullifies the chief purpose of the statute in the teeth of its express terms by dividing the desired exclusive jurisdiction into a dual jurisdiction. Contrary to the terms and purpose of the statute, it converts the Massachusetts court into a subordinate tribunal, in effect merely ancillary to the Connecticut court. It elevates the latter into the position of creator of liabilities of the debtor, and emasculates the power of the former, which should be fundamental in any bankruptcy court to determine the existence and amount and priority of liabilities of the debtor. The jurisdiction allowed by the court below to the Connecticut court is not merely obstructive; it is destructive. The inescapable consequence of such a division of jurisdiction must be to destroy in substance the primary court's power to reorganize its debtor. The construction of § 77 by the court below thus negatives the clearly expressed and salutary purpose of Congress.[14] The statement made by this Court in *Continental Bank* v. *Rock Island Ry.*, 294 U.S. 648, 676 (1935), seems directly applicable here:

> But a proceeding under § 77 is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end

[14] The failure of the Massachusetts court to enjoin the proceedings in the Connecticut court does not represent its acceptance of an ancillary or subordinate position. It is due, on the contrary, to the Massachusetts court's understandable and proper unwillingness to take steps in the matter until the jurisdictional question is settled in the present proceeding where it was first raised.

> the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile.

This argument is emphasized by a passage in the opinion of the court below. After saying that the Connecticut court might "have to resort through its trustees to the Massachusetts court to realize upon the lien," the court said (R. 308):

> If so, it is because distribution of the Boston and Providence assets—more properly the new allocation of interests in them—has been confided to the Massachusetts court. But that need not affect the power of the Connecticut court to liquidate and fix the rank of the lien.

If the New Haven claim can properly be liquidated by the Connecticut court, and the rank of the lien fixed by the Connecticut court, then the Massachusetts court has only a perfunctory jurisdiction over "the new allocation of interests in" the Boston and Providence property. If the Connecticut court can fix a lien "prior to any mortgage or other lien, charge or claim thereon and prior to any other indebtedness," it can create a prior lien exceeding the full value of the property.[15] If the Massachusetts court must enforce this, and "allocate" this new interest, it must dispose of all its debtor's property on the say-so of another court. It cannot rank any lien of other claimants ahead of it. It cannot cut down the amount of the lien to give other claimants anything. *Case* v. *Los Angeles Lumber Co.*, 308 U.S. 106 (1939). It cannot even raise money on trustees' certi-

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[15] We are not tilting at windmills. The claims which the New Haven has actually filed with the Connecticut court for its adjudication, through the year 1938, aggregate $6,138,027.56. They are estimated at more than $2,000,000 for the year 1939. Thus the total amount of claims to date awaiting this Court's decision are in excess of $8,000,000.

ficates with which its trustees may finance its defense, in a foreign jurisdiction, against claims for the imposition of a lien upon the property of its own debtor over which Congress purported to give it "exclusive jurisdiction."

The court below argued in its opinion (R. 307) that for the court having possession of the property to await "the action of such other competent tribunals as the claimant may choose" would subject it "to an indefinite delay in the dispatch of the case before it and may effectively cripple its powers." But this would seem to be an argument which applies with conclusive force in favor of the reorganization court having exclusive jurisdiction of the corporation which owns the property. If that court must await the action of possessory courts "to liquidate and fix the rank" of various claims and liens against its property, this will not merely "effectively cripple its powers," but will substantially nullify them. Under such circumstances, the "exclusive jurisdiction of the debtor and its property wherever located" given to the Massachusetts court becomes a hollow phrase. And this is true as a practical matter, too. The claims in question are merely incidental in the New Haven reorganization; in the reorganization of the Boston and Providence they are fundamental. To say in such a case that it is the Connecticut court which has jurisdiction is to allow the tail to wag the dog.

That the plain words of § 77(a) should be given their plain meaning is shown by other provisions of the statute. Thus, § 77(b) gives the reorganization court power to approve a plan of reorganization which may "include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured." The term "creditor" is then defined "for all purposes of this section" as including "all holders of claims *of whatever character* against the debtor or its property." The term "claims" is also defined as including "liens, or other interests *of what-*

ever character." Section 77(b), as amended by the Act of August 27, 1935, c. 774, 49 Stat. 911, 913; italics ours. It is hard to see how Congress could have used language more clearly indicating that it intended the Massachusetts court in this case to have the "exclusive jurisdiction" which the statute in terms gives it. The definitions of "creditors" and "claims" clearly include the very sort of claim which is made here, and show that the Massachusetts court alone was intended to have power to deal with all claims including claims of this sort.

This is confirmed by § 77(c)(7), which provides that "The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced" and "the manner in which such claims may be evidenced or allowed." Since "claims" includes "liens, or other interests of whatever character," it is plain that the orderly procedure for the allowance of claims prescribed by Congress requires that the particular claim involved here be presented to and passed upon by the Massachusetts court.

Another provision of the statute which seems relevant by analogy is § 77(i). This provides that "If a receiver or trustee of all or any part of the property of a debtor has been appointed by a Federal or State court," the debtor may file a petition under § 77. In such an event, the trustees appointed by the bankruptcy court "shall be entitled forthwith to possession of and be vested with title to such property." This section is not directly applicable here. *Duparquet Co.* v. *Evans*, 297 U.S. 216 (1936). It does, however, afford a persuasive argument by analogy. If the "exclusive jurisdiction" was extended by Congress to property which had been taken into custody of "a receiver or trustee," it would seem *a fortiori* to apply to property under the circumstances here. Nothing to the contrary was decided in the *Duparquet* case. The Court there held that the mere

appointment of a receiver in foreclosure proceedings was not ground for filing a petition under § 77(i). But in this case the petition was filed under § 77(a) on the ground that the Boston and Providence was "unable to meet its debts as they mature." The argument by analogy that, since the exclusive jurisdiction of the bankruptcy court supersedes the jurisdiction of a "receiver or trustee," it should *a fortiori* give jurisdiction here, still remains.

The court below was finally reduced to the argument (which had previously been adopted by the District Court) that "we can only resort to the doctrine normally applicable in such cases; i. e., that the court first taking over the res, draws to itself power to determine all claims upon it" (R. 309). This argument is specious; but it is not applicable here. In the first place it assumes that the Connecticut court had jurisdiction to determine the claims in question. We have argued to the contrary in Points I and II above. Even though we be wrong in that contention, however, it does not follow that the Connecticut court retained jurisdiction after the bankruptcy proceedings in Massachusetts were commenced. Despite the assertion of the court below, there is no universal principle "that the court first taking over the res, draws to itself power to determine all claims upon it."

There are many cases in which it has been held that a bankruptcy court supersedes a jurisdiction which has already been obtained by another court. *Isaacs* v. *Hobbs Tie & T. Co.*, 282 U.S. 734, 737 (1931), where many cases are cited. The rule was applied in *Gross* v. *Irving Trust Co.*, 289 U.S. 342, 344 (1933), where this Court said: "The bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate *cannot be affected by proceedings in other courts, state or federal.*" (Italics ours.) The Court there quoted from *Buck* v. *Colbath*, 3 Wall. 334, 341 (1865), where it was said that no court might interfere with the possession of another court unless it be a court

with "direct supervisory control . . . *or some superior jurisdiction in the premises.*" It was then held that the bankruptcy court's jurisdiction in the *Gross* case "falls within the italicised exception, since the jurisdiction of the bankruptcy court is paramount and not concurrent."

These cases are directly applicable here. The Massachusetts court is exercising bankruptcy jurisdiction. Its jurisdiction is "paramount and not concurrent." It is true that the Connecticut court is also sitting as a bankruptcy court. But it is not administering the property of the Boston and Providence in bankruptcy; the powers it seeks to assert are ordinary equity powers. So far as the property of the Boston and Providence is concerned, the Massachusetts court is the bankruptcy court and has paramount jurisdiction.[16] Even if the jurisdiction of an ordinary bankruptcy court would not supersede the jurisdiction of another bankruptcy court, the Massachusetts court here is not an ordinary bankruptcy court. It is a court acting under § 77, to which Congress has in express terms given "exclusive jurisdiction of the debtor and its property." See *Palmer* v. *Massachusetts*, 308 U.S. 79, 85-86 (1939). There is no case which decides that the § 77 court is not the paramount court with respect to its debtor's property. There is no ground on which the clear mandate of the statute to that effect should be ignored. Only by recognizing the paramount jurisdiction in the Massachusetts court will that Court in fact have "exclusive jurisdiction." Only by recognizing the paramount jurisdiction of the Massachusetts court can the purpose of Congress to achieve a unified dis-

[16] *Cf. Petition of Shortridge*, 20 F. (2d) 638 (C.C.A. 9th, 1927): "Any attempt at a double administration of this estate by two sets of receivers can only result in needless expense, delay, confusion, and unseeming conflict. To prevent just such things, bankruptcy courts were established, and endowed with full and complete jurisdiction to enforce a single and simple administration."

position of the debtor's estate be obtained. Only by recognizing the paramount position of the Massachusetts court can we "give consistency and coherence to the statutory rule." *Duparquet Co.* v. *Evans*, 297 U.S. 216, 224 (1936).

For the same reason, the argument advanced in the court below that the jurisdiction of the Connecticut court over property in its possession includes power to charge the property with expenses resulting from that possession must fall before the exclusive and paramount jurisdiction of the Massachusetts court's bankruptcy powers. This would seem to follow from this Court's decision in *Gross* v. *Irving Trust Co.*, 289 U.S. 342 (1933), *supra*. There, property was taken into the custody of receivers appointed by a state chancery court. There could be no doubt about their possession, nor the validity of their possession. Thereafter, the owner of the property was adjudged a bankrupt. This Court held that the bankruptcy court alone could determine the fees and expenses of the receivership, saying (p. 345): "The jurisdiction of the bankruptcy court being paramount, the power of the state court to fix the compensation of its receivers and the fees of their counsel necessarily came to an end with the supervening bankruptcy. When the bankruptcy court acquired jurisdiction, the sole power to fix such compensation and fees passed to that court."

Furthermore, the expenses here are essentially administration expenses. If the claim has any validity, it arises out of the administration of the Boston and Providence property over a period of years. These are not merely temporary expenditures made for the preservation of perishable property, which the debtor claims to own, during the period of time which is required for determining the validity of that claim. Here the New Haven has no claim of ownership; and it has incurred the expenses in the performance of its own duty to operate the property—a duty which was imposed on it by law wholly apart from the

bankruptcy, and which has not been discharged by any provision of the Bankruptcy Act which its trustees have seen fit to follow.

If there is any lien for such administration expenses, it should be established by the Massachusetts court. That court is the only court which can effectively administer the assets of the Boston and Providence in bankruptcy. The purposes of the act can be subserved only by giving it the "exclusive jurisdiction" which Congress has in terms conferred upon it.

Conclusion

The judgment below is erroneous and should be reversed.

Respectfully submitted,

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Appendix

Excerpts from Section 77 of the Bankruptcy Act, as Amended

Section 77-(a). Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction such corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the "Commission"): *Provided*, That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court of the district in which its principal operating office in such State during the preceding six months or the greater portion thereof has been located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act. Upon the filing of such petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court shall

extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and circuit courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a "debtor." Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which such other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of such other debtor; and upon the filing of such petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon such court if it approves such petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders as the court has with respect to such other debtor. . . .

(b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured; either through the issuance of new securities of any character or otherwise; . . . and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any

other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term "stockholders" shall include the holders of voting trust certificates. The term "creditors" shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interest of whatever character. . . .

(c) After approving the petition:

. . . . . .

(7) The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, and for the purposes of the plan and its acceptance, after notice and hearing, the division of creditors and stockholders into classes according to the nature of their

respective claims and interests. Such division shall not provide for separate classification unless there be substantial differences in priorities, claims, or interests. . . .

(i) If a receiver or trustee of all or any part of the property of a debtor has been appointed by a Federal or State court . . . a petition or answer may be filed under this section at any time thereafter by such debtor, or its creditors as provided in subsection (a) of this section, and if such petition is approved, the trustee or trustees appointed under this section, or the debtor until such trustee or trustees are appointed, shall be entitled forthwith to possession of and be vested with title to such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver or receivers or prior trustee or trustees and for the payment of such reasonable administrative expenses and allowances in the prior proceedings as may be fixed by the court appointing such receiver or trustee. . . .

(j) . . . The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section.

(l) In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.